

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

JARRETT ANTHONY NEU §
§
V. § CIVIL ACTION NO. G-13-180
§
CITY OF GALVESTON, TEXAS §

OPINION AND ORDER

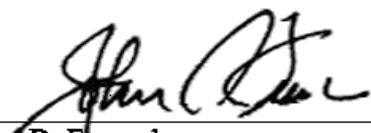
Before the Court is the “Motion to Dismiss” of Defendant, City of Galveston, Texas (City), filed on June 7, 2013. Following the filing of the Motion, this Court conferred with counsel and entered an Order which, *inter alia*, ordered Plaintiff, Jarrett Anthony Neu, to either amend his complaint or file a response to the Motion. To date, Neu has done neither. The Order also set a telephonic Status Conference for August 14, 2013, which counsel for Neu did not attend or request be rescheduled. The Court, therefore, considers the Motion to Dismiss to be ripe for determination.

In his Original Complaint Neu alleges that he was subjected to a false arrest and the use of excessive force by “members of the Galveston Police Department”; however, the sole Defendant named in the complaint is the City of Galveston. The complaint is completely devoid of any allegations of a policy or custom of the City which caused Neu to suffer any injury, a prerequisite to establish municipal liability. See Monell v. New York City Department of Social Services, 436 U.S. 658, 694 (1978) Consequently, Neu’s complaint fails to state a claim for which relief could be granted against the City.

Furthermore, the City is immune from liability for the alleged intentional torts of assault and battery, conversion and infliction of emotional distress alleged by Neu. See City of San Antonio v. Dunn, 796 S.W. 2d 258, 261 (Tex. App. -- San Antonio, 1990, writ denied)

It is, therefore, **ORDERED** that the “Motion to Dismiss” (Instrument no. 4) of Defendant, City of Galveston, Texas, is **GRANTED** and that the “Original Complaint” of Plaintiff, Jarrett Anthony Neu, is **DISMISSED**.

DONE at Galveston, Texas, this 15th day of August, 2013.



John R. Froeschner
United States Magistrate Judge